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In the

Supreme Court of the United States

October Term, 1935

In Equity

No. 10, ORIGINAL

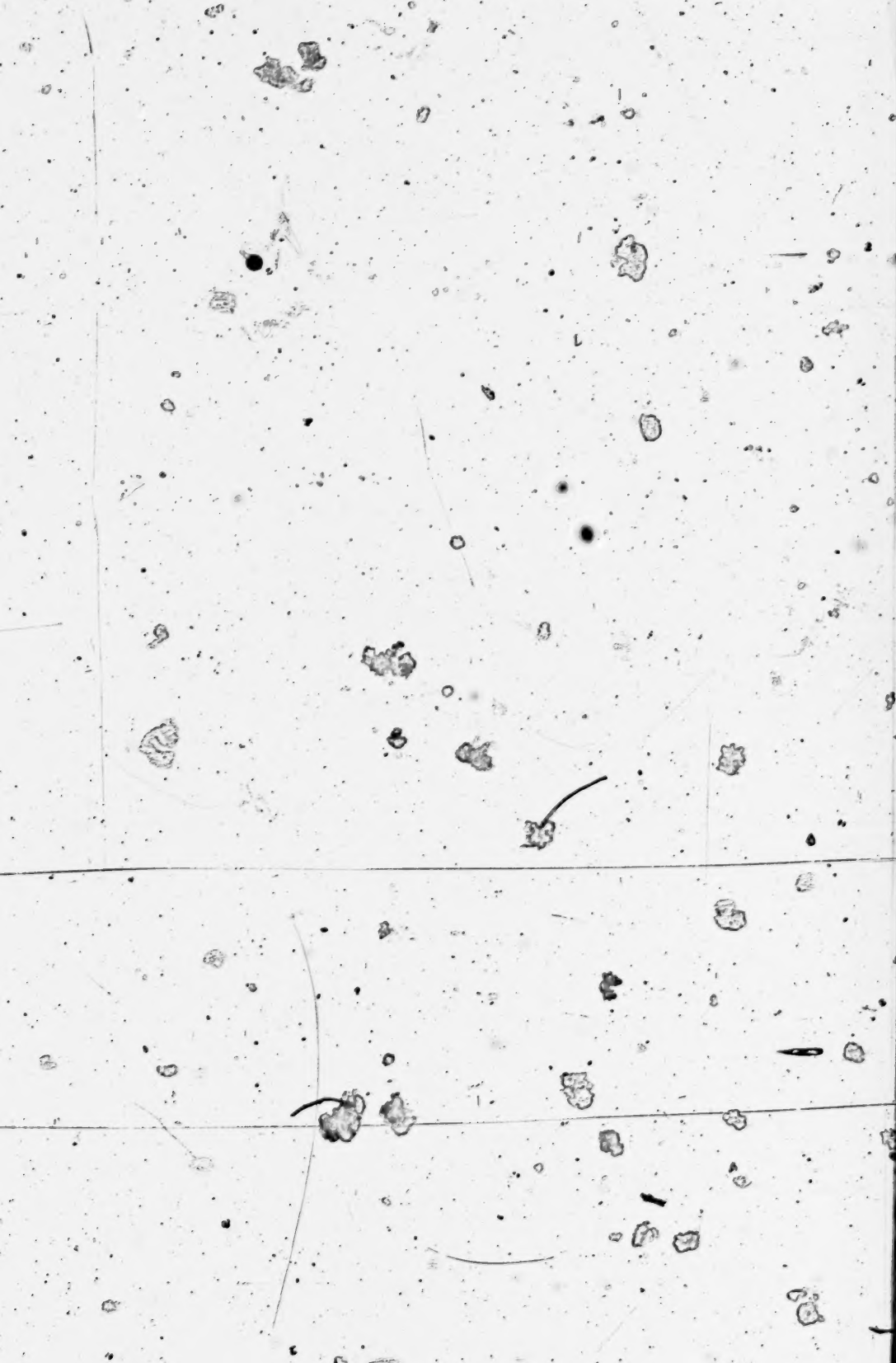
THE STATE OF WYOMING, *Complainant,*
vs.
THE STATE OF COLORADO, *Defendant.*

MOTION FOR LEAVE TO FILE PETITION FOR RULE TO SHOW CAUSE AND PETITION FOR RULE TO SHOW CAUSE

EWING T. KERR
Attorney General of the State of Wyoming.
HAROLD T. BACHELLER
Deputy Attorney General.
ARTHUR KLINE
Assistant Attorney General.
Solicitors for Complainant, the State of Wyoming.

JAMES A. GREENWOOD
Cheyenne, Wyoming
W. J. WEHRLI
Casper, Wyoming
Of Counsel.

WYOMING LABOR JOURNAL, CHEYENNE



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To the Honorable, the Chief Justice, and Associate Justices of the Supreme Court of the United States:

The State of Wyoming, one of the states of the Union of the United States of America, appearing in her sovereign capacity by Ewing T. Kerr, her Attorney General, upon direction of the Honorable Nels H. Smith, her Governor, and the Honorable L. C. Bishop, State Engineer of the State of Wyoming and her Commissioner charged with authority in relation to interstate streams, respectfully moves this Honorable Court for leave to file in this Court and in this cause, the same being in Equity No. 10,

Original, her petition for rule to show cause, which said petition is presented herewith.

Complainant respectfully shows unto this Court that said petition, on its face, shows that the said defendant, her officers, agents, servants, representatives and other citizens, residents and corporations, is intentionally and wilfully violating complainant's rights and the rights of complainant's water users of the State of Wyoming to appropriate and use water from the Laramie River, a non-navigable interstate stream flowing through the territory of the said defendant and the said complainant, as fixed and determined by this Honorable Court on the first day of June, A. D. 1936. (See The State of Wyoming v. The State of Colorado, 298 U. S. 753, 80 Law. Ed. 1339).

Complainant further shows, by her said petition for rule to show cause, that the said defendant is violating the decree of this Court made and entered herein as aforesaid in that said defendant and her water users in the State of Colorado have taken and appropriated water from said Laramie River in excess of 39,750 acre feet, the same being the maximum amount of water allocated to the said defendant and her water users by this Honorable Court.

That as of the date hereof, the said defendant has taken and diverted from the said Laramie River in Colorado 12,673 acre feet in excess of the amount to which the said State of Colorado is lawfully entitled, resulting in material and substantial injury to your complainant and her water users in Wyoming and depriving said complainant and her water users of the use, during the present growing season, of the necessary water for irrigation of crops, and said water could not be obtained from any other source, all of which was and is well known to the defendant.

WHEREFORE, the State of Wyoming prays leave to file her petition for rule to show cause as above stated.

Respectfully submitted,

EWING T. KERR
Attorney General of the
State of Wyoming.

HAROLD I. BACHELLER
Deputy Attorney General.

ARTHUR KLINE
Assistant Attorney General.
Solicitors for Complainant.

JAMES A. GREENWOOD

W. J. WEHRLI
Of Counsel.

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THE STATE OF WYOMING,)
Complainant,)
vs.)
THE STATE OF COLORADO,)
Defendant.)

PETITION FOR RULE TO SHOW CAUSE.

To the Honorable, the Chief Justice and Associate Justices of the Supreme Court of the United States:

The State of Wyoming, by Ewing T. Kerr, Attorney General of the State, under the direction of the Honorable Nels H. Smith, Governor of the State, and in compliance with the request of the Honorable L. C. Bishop, State Engineer of the State and her Commissioner charged with authority in relation to interstate streams, by leave of this Honorable Court first had and obtained, bring this petition for rule to show cause, in her own behalf and that of her officials, agents, servants, and other citizens, residents and corporations, against The State of Colorado in her behalf and that of her officials, agents, servants, representatives and other citizens, residents and corporations, and respectfully sets forth and alleges as grounds for a rule

to show cause against the defendant, her officials, agents, servants, representatives and other citizens, residents and corporations, why the said defendant, her officials, agents, servants, representatives and other citizens, residents and corporations should not be adjudged in contempt of this Honorable Court for their failure and refusal to obey and comply with the opinion and decree of this Honorable Court rendered and entered June 1, A. D. 1936.

FIRST.

That your complainant is one of the states of the United States entitled to enjoy all privileges, rights and powers, and with all the duties, including the duty of protecting the rights, interests and property of her citizens and residents possessed or devolved upon each and all of said states of the United States of America.

SECOND.

That The State of Colorado is likewise one of the states constituting the United States of America entitled to enjoy all the privileges, rights and powers, and with all the duties, including the duty of protecting the rights, interests and property of its citizens and residents possessed and devolving upon each and all of said states of the United States of America.

THIRD.

That heretofore and on the first day of June, A. D. 1936, this Honorable Court rendered its opinion and entered its decree thereon in the case of The State of Wyoming vs. The State of Colorado, 298 U. S. 573; 80 Law. Ed. 1339; that under said opinion and decree, as aforesaid, this Honorable Court confirmed and established the right of The

State of Colorado, or of any one recognized by her as duly entitled thereto, to divert and take within that State

(1) 18,000 acre feet of water per annum from the Laramie River and its tributaries in virtue of the Skyline Ditch appropriation;

(2) 4,250 acre feet of water per annum from such stream and its tributaries in virtue of certain meadowland appropriations;

(3) 2,000 acre feet per annum, the amount of the recognized appropriations, through the Wilson Supply Ditch, from the headwaters of Deadman Creek;

(4) 15,500 acre feet of water per annum from the Laramie River and its tributaries in virtue of the Laramie-Poudre Tunnel appropriation;

and said opinion and decree, as aforesaid, confirmed and established the right of The State of Wyoming and her water claimants to receive and divert within the State the remaining water of the stream and its tributaries.

FOURTH.

Reference is hereby made to the amended original bill and exhibits filed, the answer of the defendant, the testimony taken on both sides, the final decree in the cause, and each and every other paper and proceeding in this cause from the institution of the suit to the filing of this petition, and it is prayed that the same may be taken and read as a part thereof at any time and on hearings on this petition.

FIFTH.

That from on or about the first day of May, A. D. 1939, to and including the eighteenth day of June, A. D. 1939, the said defendant, The State of Colorado, her officers, agents, servants, representatives and other citizens, resi-

dents and corporations, had diverted and taken from the Laramie River the following quantities of water:

Through the Skyline Ditch 9,013 acre feet
Through the Laramie-Poudre Tunnel 7,458 acre feet
Through the Wilson Supply Ditch 872 acre feet
Through the Meadowland appropriations 22,526.43 acre feet, or a total of 39,865.43 acre feet.

SIXTH.

That thereafter and on the nineteenth day of June, A. D. 1939, the said defendant, through her duly authorized officers, agents, servants, representatives and other citizens, residents and corporations, closed the headgates of the Skyline Ditch, Meadowland appropriations, Wilson Supply Ditch and the Laramie-Poudre Tunnel, and posted, or caused to be posted, upon said headgates a notice in the following form:

"Notice.

"..... Ditch

"This headgate has been closed by me this..... day of....., A. D. 19....., in accordance with provisions of a decree of the U. S. Supreme Court in Wyo. v. Colo.; and in accordance with decree of the District Court of Colorado, Larimer Co., Cause No. 7897 entered on the 2nd day of February, A. D. 1939.

"Further diversions of this ditch during the current year are enjoined by Court decree.

(signed) R. A. Mosier
Water Commissioner, Dist. No. 48."

That each of s[illegible]notices contained thereon, in the blank

space provided, the name of the particular diversion and the date of the posting of said notice.

SEVENTH.

That thereafter and on the twenty-second day of June, A. D. 1939, the said defendant, in disregard and violation of the opinion and decree of this Honorable Court rendered on June 1, A. D. 1936, opened and permitted water to be diverted through the said Skyline Ditch, Meadowland appropriations, Wilson Supply Ditch and the Laramie-Poudre Tunnel in amounts greatly in excess of the total allocation of 39,750 acre feet.

That from the said twenty-second day of June, A. D. 1939, to and including the eleventh day of July, A. D. 1939, there was taken and diverted through the said diversions the following quantities of water:

Through the Skyline Ditch 3,644 acre feet

Through the Laramie-Poudre Tunnel 2,530 acre feet

Through the Meadowland appropriations 6,499 acre feet, or a total of 12,673 acre feet, said 12,673 acre feet being in excess of the 39,750 acre feet heretofore allocated to The State of Colorado by this Honorable Court.

EIGHTH.

That this Honorable Court, by its decree and injunctional order of June 1, A. D. 1936, (see 298 U. S. 573; 80 Law. Ed. 1339) enjoined the said defendant, her officers, agents and servants and her water claimants from diverting or taking from the Laramie River and its tributaries in The State of Colorado for meadowland appropriations more than 4,250 acre feet of water per annum and the said defendant, The State of Colorado, her officers, agents and representatives, had at all times since June 1, A. D. 1936,

knowledge of the issuance thereof; that a true and correct copy of said decree, marked Exhibit "A", is attached hereto and by this reference expressly made a part hereof.

NINTH.

That the said defendant, The State of Colorado, her officers, agents and servants, and her water claimants, has intentionally disobeyed said injunctional order and decree and, in contempt of this Honorable Court the said defendant, her officers, agents and servants, and her water claimants, from on or about the first day of May, A. D. 1939, to and including the eleventh day of July, A. D. 1939, has diverted, taken and permitted the diversion and taking through the headgates of said Meadowland ditches, from the natural channel of the said Laramie River in The State of Colorado, 24,775 acre feet of water over and above the 4,250 acre feet of water awarded and set over unto said Meadowland diversions under the decree of this Honorable Court of June 1, A. D. 1926.

TENTH.

That the disobedience of said decree and injunctional order of this Honorable Court has resulted in a material and substantial injury to your complainant in that it, the said complainant, has been deprived of the use of said water during the present growing season, which needed water could not be obtained from any other source, all of which was likewise well known to the defendant, The State of Colorado, and her officers, agents and servants and her water claimants.

ELEVENTH.

That the said defendant, her officers, agents and servants, and her water claimants, were duly notified by the com-

plainant that water was being diverted from the said Laramie River in The State of Colorado in excess of 39,750 acre feet, and the said defendant, her officers, agents and servants, and her water claimants, were requested by the said complainant to forthwith close the headgates of the several diversions and cease appropriating said water.

TWELFTH.

That on or about the first day of July, A. D. 1939, at the request of the complainant, officials of the said complainant, charged with the supervision of the waters of The State of Wyoming and of their appropriation, diversion and distribution, and the Attorney General of The State of Wyoming, conferred with like officials and the Attorney General of The State of Colorado in the City of Denver, State of Colorado; that at said conference protests were made by the complainant's officials against the excessive diversions hereinabove alleged and set out, and the said officials of the defendant, while admitting that the said defendant, her officers, agents and servants, and her water claimants, had appropriated water from said Laramie River in excess of 39,750 acre feet, refused to close said headgates and cease said diversions.

THIRTEENTH.

That subsequent to said conference, and to-wit, on the seventh day of July, A. D. 1939, the said complainant again formally protested in writing to the said defendant concerning said excessive diversions and requested and demanded in said written protest that the said defendant take steps to prevent said excessive diversions; that attached hereto, and marked Exhibit "B", is a true and correct copy of said written protest of July 7, A. D. 1939;

that set forth in said complainant's Exhibit "B" is a true and correct copy of a former protest made upon the said defendant by the said complainant by telegram under date of June 29, A. D. 1939.

FOURTEENTH.

That the said claimant also attaches hereto and makes a part hereof complainant's Exhibits "C" and "D", being affidavits of water officials of The State of Wyoming having personal knowledge of said diversions.

FIFTEENTH.

That all of the diversions involved in this proceeding are within the borders of The State of Colorado and the officials of The State of Wyoming have no authority to exercise any jurisdiction whatsoever in regard to the same, and the said complainant has no adequate remedy, or any remedy in any court whatsoever except in the Supreme Court of the United States in respect to the matters herein alleged to prevent the said defendant, her officers, agents and servants, and her water claimants from further excessive and unlawful diversions of the waters of the said Laramie River; by reason of the said unlawful diversions by said defendant, her officers, agents and servants, and her water claimants, of water belonging to and being the property of said complainant, the said complainant and her water users have suffered and will continue to suffer substantial damage.

WHEREFORE, complainant prays that this Honorable Court issue its rule against The State of Colorado, directing The State of Colorado to appear before this Honorable Court on a day certain to be fixed by this Honorable Court and show cause, if any there be, why the said defendant

should not be adjudged in contempt and punished for violating said injunction and decree; that a fine be imposed upon said defendant, for the use of said complainant, sufficient in amount to reimburse your complainant and her water appropriators from the said Laramie River for injuries sustained by reason of the violation by the said defendant of said injunctional order and decree of June 1, A. D. 1936; that this Honorable Court forthwith take all necessary and proper steps, issue any and all needful orders, decrees or judgments to carry out and enforce the decrees of this Honorable Court in the diversions of said waters, including the appointment of some proper person or federal agency to administer said water so that the said complainant will not in the future be deprived of water to which it is lawfully entitled; that complainant be granted her costs and such other and further relief be accorded to complainant as to this Honorable Court shall appear proper in the premises.

EWING T. KERR
Attorney General of the
State of Wyoming.

HAROLD I. BACHELLER
Deputy Attorney General.

ARTHUR KLINE
Assistant Attorney General.
Solicitors for Complainant,
the State of Wyoming.

JAMES A. GREENWOOD

W. J. WEHRLI
Of Counsel.

THE STATE OF WYOMING)
)ss.
COUNTY OF LARAMIE)

EWING T. KERR, being duly sworn on his oath according to law, deposes and says: That he is the Attorney General of the State of Wyoming, and as such, at the direction and upon the request of the Governor of said State, and upon the request of the State Engineer and Commissioner for Wyoming, exhibits the foregoing petition for rule to show cause; that he has read said petition for rule to show cause and that the facts therein set forth, saving and excepting those averred on information and belief, are true; and that as to the facts therein alleged as upon information and belief, affiant is credibly informed and verily believes that said facts are true.

EWING T. KERR

Subscribed in my presence and sworn to before me this 19 day of July, A. D. 1939.

RUBY B. SALYER
Notary Public

(Notarial Seal)

My commission expires March 25, 1943.

EXHIBIT "A".

SUPREME COURT OF THE UNITED STATES

No. 10, Original, October Term, 1935.

THE STATE OF WYOMING,
Complainant,

vs.

THE STATE OF COLORADO.

(June 1, 1936.)

DECREE

This cause having been heretofore submitted on the pleadings and the evidence taken before and reported by the Commissioners appointed for the purpose, and the Court being now fully advised in the premises:

IT IS CONSIDERED, ORDERED and DECREED that The State of Colorado, her officers, agents and servants, and her water claimants, be, and they are hereby, severally enjoined from diverting or taking from the Laramie River and its tributaries in The State of Colorado more than four thousand two hundred and fifty (4,250) acre-feet of water per annum in virtue of and through the meadowland appropriations in that State which are named in the pleadings and evidence, such diversion to be measured at the headgates through which the water is diverted.

And it is also considered, ordered and decreed that The State of Wyoming be, and she is hereby, given leave to apply later on for an appropriate order respecting the measurement and recording of all diversions in The State of Colorado from the Laramie River and its tributaries in the event the two States are unable to agree upon an appropriate plan for measuring and recording such diversions and there proves to be a need for action by this Court in this matter. Jurisdiction of the cause will be retained for the purpose of such an application.

And it is further ordered and adjudged that costs in the suit be taxed one-half to each of the two States.

A true copy.

Test:

(signed) CHARLES ELMORE CROPLEY
Clerk, Supreme Court, U. S.

EXHIBIT "B".

July 7, 1939

Honorable Ralph L. Carr, Governor
of the State of Colorado
Honorable Byron G. Rogers, Attorney
General of the State of Colorado
Honorable M. C. Hinderlider, State
Engineer of the State of Colorado

Gentlemen:

On June 18, A. D. 1939, the State of Colorado had used through the Skyline Ditch, Meadowland Ditches, Laramie-Poudre Tunnel and Wilson Supply Ditch, a total of 39,750 acre feet from the Laramie River, which was the amount allocated for these ditches by an opinion and decree of the Supreme Court of the United States dated June 1, A. D. 1936.

On said June 18th, 1939, Mr. M. C. Hinderlider, State Engineer of the State of Colorado, closed, or caused to be closed, the headgates of said diversions, to-wit: Skyline Ditch, Meadowland Ditches, Laramie-Poudre Tunnel and Wilson Supply Ditch, and posted, or caused to be posted, on said headgates, and each of them, a notice in substance as follows:

"Laramie Poudre Tunnel Ditch.

Notice.

"This headgate has been closed by the Water Commissioner in accordance with the terms of the decree of the Supreme Court of the United States and the decree of the District Court of Larimer County, Colorado.

"Any further diversion through this ditch during the present irrigation season will be in contempt of said decrees.

R. A. Mosier,
Water Commissioner
District No. ——."

On the 22nd day of June, A. D. 1939, the water appropriators of Colorado, in defiance of the action of the State Engineer of the State of Colorado and in defiance of the decree of the Supreme Court of the United States dated June 1, 1936, opened the headgates to the Skyline Ditch, Meadowland Ditches, and Laramie-Poudre Tunnel.

On the 23rd day of June, A. D. 1939, I contacted Byron G. Rogers, Attorney General of the State of Colorado, and advised him that these gates were open and that the State of Wyoming insisted that said gates be closed inasmuch as Colorado has used the amount of water allocated to said State by the Supreme Court of the United States.

On the same date, to-wit: On the 23rd day of June, 1939, Mr. L. C. Bishop, State Engineer of the State of Wyoming, contacted Mr. M. C. Hinderlider, State Engineer of the State of Colorado, and made demand upon him to close all of said headgates in view of the fact that Colorado had received the total amount of water allocated to it by the Supreme Court of the United States, and on the 29th day of June, A. D. 1939, Mr. L. C. Bishop, State Engineer of the State of Wyoming, sent the following wire to the State Engineer of the State of Colorado:

"M. C. Hinderlider
State Engineer
Capitol Building
Denver, Colorado

On June 28 Laramie Poudre Tunnel was flowing 65.9 second feet, Skyline Ditch flowing 104.6 second feet. On June 27 Dead Man

Ditch flowing 3.3 second feet. Investigation disclosed all meadow land ditches were diverting. Wyoming demands that Laramie Poudre Tunnel, Skyline Ditch, Dead Man Ditch and all meadow land diversions cease forthwith. Advise immediately if this will be done. Would like to have conference with you and Attorney General Saturday morning at ten.

L. C. BISHOP,
State Engineer."

And on said 29th day of June, A. D. 1939, Mr. L. C. Bishop sent the following wire to the Attorney General of the State of Colorado:

"Honorable Byron G. Rogers
Attorney General
Capitol Building
Denver, Colorado

Have just sent the following wire to State Engineer Hinderlider quote on June 28 Laramie Poudre Tunnel was flowing 65.9 second feet, Skyline Ditch flowing 104.6 second feet. On June 27 Dead Man Ditch flowing 3.3 second feet. Investigation disclosed all meadow land ditches were diverting. Wyoming demands that Laramie Poudre Tunnel, Skyline Ditch, Dead Man Ditch and all meadow land diversions cease forthwith. Advise immediately if this will be done. Would like to have conference with you and Attorney General Saturday morning at ten. Unquote. Earnestly request your immediate cooperation in seeing that the orders of Supreme Court of United States and the District Court of Larimer County are carried out.

L. C. BISHOP,
State Engineer."

That on said 29th day of June, A. D. 1939, Mr. M. C. Hinderlider, State Engineer of the State of Colorado, wired the State Engineer of the State of Wyoming, as follows:

"E. C. Bishop, State Engineer
State Capitol
"Re your telegrams this day to Attorney General Rogers and myself we shall be very glad to confer with you and Attorney General Kerr here at ten o'clock Saturday.

M. C. HINDERLIDER,
State Engineer."

The State Engineer of the State of Wyoming and the Attorney General of the State of Wyoming met in conference with the Governor of the State of Colorado, the Attorney General of the State of Colorado and the State Engineer of the State of Colorado, together with representatives of the water appropriators of the Skyline Ditch, the Laramie-Poudre Tunnel and the Meadowland Ditches. That at said conference the officials of the State of Wyoming were notified by the officials of the State of Colorado that they, the said officials of the State of Colorado, would not close the headgates of the Skyline Ditch, Meadowland Ditches and the Laramie-Poudre Tunnel, notwithstanding the fact that the officials of the State of Colorado admit that they had already diverted water through the Skyline Ditch, the Meadowland Ditches, The Laramie-Poudre Tunnel and the Wilson Supply Ditch equal to and in excess of 39,750 acre feet.

The drouth situation in Wyoming is acute: the water users of this State are making daily demands upon this office to institute immediate action to enforce the decree of the Supreme Court of the United States.

The Governor of the State of Wyoming and the State Engineer of the State of Wyoming have both requested that I write you and again make demand upon the

State of Colorado to comply with and obey the terms of the opinion and decree of the Supreme Court of the United States rendered June 1, A. D. 1936. In compliance with their request, the State of Wyoming again makes demand upon your State to forthwith close the said headgates inasmuch as the State of Colorado has used the total of 39,750 acre feet, said total being the amount of water allocated to the State of Colorado by said decree of the Supreme Court of the United States, and is now using water in excess of the amount allocated to them by said decree and water which is the property of the State of Wyoming.

If the State of Colorado still continues to refuse to comply with and obey said decree, the State of Wyoming will take such action as may be necessary and advisable in the premises to enforce the decree of the Supreme Court of the United States.

Yours very truly,

(signed) EWING T. KERR
Attorney General.

ETK:rs

EXHIBIT "C".

AFFIDAVIT

THE STATE OF WYOMING)
)ss.
COUNTY OF LARAMIE)

I, BEN E. Le VASSEUR, of lawful age, having been first duly sworn on oath according to law, depose and say:

That I am the duly appointed, qualified and acting hydrographer charged with the duty of measuring and reporting water diversions on the Laramie River; that I act under appointment and direct supervision of the State Engineer of the State of Wyoming and reports compiled

by me in the discharge of my duties showing in detail the water being, from time to time, taken and diverted from said Laramie River are transmitted to the office of the State Engineer of the State of Wyoming, at the Capitol Building, in the City of Cheyenne, Laramie County, Wyoming, and become a permanent record of that office.

That I entered upon my duties as said hydrographer for the irrigating season of 1939, on or about the first day of May, 1939, and continuously since said date have observed and measured the water being diverted from said Laramie River; that on the 18th day of June, 1939, the Skyline Ditch, Laramie-Poudre Tunnel, Wilson Supply Ditch and the Meadowland diversions had jointly diverted water from the Laramie River in the aggregate of 39,750 acre feet.

That on June 18th, 1939, the officials of the State of Colorado closed, or caused to be closed, all of the headgates diverting water from the above named diversions of the said Laramie River, and on each headgate a notice was posted by the said officials of the State of Colorado, similar and substantially in the following form:

Notice.

"..... DITCH

This headgate has been closed by me this..... day of....., A. D. 19....., in accordance with provisions of a decree of the U. S. Supreme Court in Wyo. vs. Colo.; and in accordance with decree of the District Court of Colorado, Larimer Co., Cause No. 7897 entered on the 2nd day of February, A. D. 1939.

Further diversions of this ditch during the current year are enjoined by Court Decree.

.....

Water Commissioner, Dist. No. 48."

That subsequently to the closing of said headgates on the said 18th day of June, 1939, and commencing on or about the 22nd day of June, 1939, the said headgates were opened by the water appropriators of the State of Colorado and said headgates have been since said date and are now diverting water from the Laramie River in excess of 39,750 acre feet.

That I made oral protest to one R. A. Mosier, Water Commissioner for the State of Colorado, against the reopening of said headgates, who stated to me in substance that he was not going to take any action looking toward the closing of said headgates as he had not received any instructions so to do from other officials of the State of Colorado.

I further state that the said Skyline Ditch, Laramie-Poudre Tunnel and Meadowland diversions have diverted water from said Laramie River from June 21, 1939 to June 30, 1939, inclusive, 6,648.3 acre feet, said amount being in excess of the 39,750 acre feet.

That on the 8th day of July, 1939, I measured water being diverted through the Laramie-Poudre Tunnel and Skyline Ditch on said Laramie River and by actual measurement said Laramie-Poudre Tunnel was diverting 51.32 second feet and the said Skyline Ditch was diverting 85.28 second feet.

Further affiant sayeth not.

BEN. E. LEVASSEUR.

Subscribed and sworn to before me this 9 day of July, A. D. 1939.

RUBY B. SALYER
Notary Public

(Seal)

My commission expires March 25, 1943.

EXHIBIT "D"

AFFIDAVIT.

THE STATE OF WYOMING)
)ss.
COUNTY OF LARAMIE)

I, EARL LLOYD, of lawful age, having been first duly sworn on oath according to law, depose and say:

That I am an engineer duly licensed to practice my profession in the State of Wyoming.

That I am the duly appointed, qualified and acting Deputy State Engineer for the State of Wyoming.

That as Deputy State Engineer for the State of Wyoming, I have custody of all records and reports of the office of State Engineer; that I have examined all reports from the hydrographer on the Laramie River, who is charged with the duty of measuring and reporting water diversions on said Laramie River; that said reports, as made by said hydrographer, are filed in the office of the State Engineer and are a permanent record of that office.

That said reports of said hydrographer show that the Skyline Ditch, Laramie-Poudre Tunnel, Wilson Supply Ditch and Meadowland diversions in the State of Colorado have all diverted from the Laramie River an aggregate total of 39,750 acre feet up to and including June 18, A. D. 1939.

That on the 28th day of June, A. D. 1939, in company with one S. S. Sharp, Water Superintendent for Water Division No. 1 of the State of Wyoming, I visited the headgates of the Skyline Ditch, Laramie-Poudre Tunnel and the diversions of the Meadowlands; that on said day, I personally observed that the headgates of the Skyline Ditch,

Laramie-Poudre Tunnel and the Meadowland diverisons were open and water was being diverted from the Laramie River through said headgates, and each of them, and I further observed upon said headgates a notice which was in substantially the following form:

"Notice.

"..... Ditch

"This headgate has been closed by me this..... day of....., A. D. 19....., in accordance with provisions of a decree of the U. S. Supreme Court in Wyo. v. Colo.; and in accordance with decree of the District Court of Colorado, Larimer Co., Cause No. 7897 entered on the 2nd day of February, A. D. 1939.

"Further diversions of this ditch during the current year are enjoined by Court decree.

(signed) R. A. Mosier,
Water Commissioner, Dist.
No. 48."

That each of said notices contained thereon, in the blank space provided, the name of the particular diversion and the date of the posting of said notice.

That the original reports in our office received from the hydrographer on the Laramie River disclose that the said headgates of the Skyline Ditch, Laramie-Poudre Tunnel and the Meadowland diversions have been open since the 22nd day of June, A. D. 1939, and they, and each of them, have been diverting water in excess of the aggregate total of 39,750 acre feet.

That from on or about the 1st day of May, A. D. 1939, to and including the 12th day of July, A. D. 1939, the Meadowland appropriators had taken and diverted from the Laramie River in the State of Colorado a total of 29,025 acre feet.

That since the 22nd day of June, A. D. 1939, to and including the 12th day of July, A. D. 1939, the State of Colorado has taken and diverted through the Skyline Ditch 3,644 acre feet, through the Laramie-Poudre Tunnel 2,530 acre feet and through the Meadowland diversions 6,499 acre feet, or a total of 12,673 acre feet in excess of the 39,750 acre feet; that said State of Colorado has, since the 12th day of July, A. D. 1939, and is now taking and diverting water from the said Laramie River in the State of Colorado.

Further affiant sayeth not.

EARL LLOYD

Subscribed and sworn to before me this 19 day of July, 1939.

RUBY B. SALYER
Notary Public

(Seal)

My commission expires March 25, 1943.

THE STATE OF COLORADO)
)ss.
City and County of Denver)

Service of a copy of the petition for rule to show cause in the case of The State of Wyoming vs. The State of Colorado, Original No. 10, is hereby acknowledged to have been received by me this 19 day of July, A. D. 1939.

BYRON G. ROGERS
Attorney General of Colorado
and Solicitor for Defendant.